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TRADEMARKS AND TRADENAMES: INVENTED WORDS: EXTENT OF TRADEMARK.—The word "groceteria," as applied to a grocery store conducted by cafeteria methods, may be a trademark, according to *Groceteria Stores Company v. Tibbett*.¹ The case harmonizes with principles applied by both English and American cases on the use of invented words as trademarks. In England, by statute, invented words may be trademarks although they refer directly to the character of the article trademarked.² A term is not invented within this rule if it consists of a whole existing word plus a suffix,³ but it is invented if, like "groceteria," it is a compound of parts only of two existing words.⁴ In America, even in the absence of statute, the same principle prevails, and invented words may be trademarks, although their sound, through similarity with natural words from which they are derived, suggests the article trademarked.⁵

It is a familiar rule that a word which is descriptive of the article which it identifies cannot be appropriated as a technical trademark.⁶ The fact that a word is foreign in origin will not justify its use if it is descriptive in its foreign meaning.⁷ Thus the word "cafeteria" could not have been appropriated as a trademark, even when first introduced into America.

A term originally suitable for a trademark may become descriptive by custom. After becoming descriptive, it cannot be adopted as a trademark.⁸ But if the term has become a trademark before

¹ (Wash., Dec. 29, 1916), 162 Pac. 54.

² *Christy v. Tipper*, [1904] 1 Ch. Div. 696.

³ *Christy v. Tipper*, *supra*, n. 2, "Absorbine" rejected.

⁴ *In re Aktiengesellschaft's Trademark*, [1914] 2 Ch. 103, "Parlograph" accepted.

⁵ *Keasbey v. Brooklyn Chemical Works* (1894), 142 N. Y. 467, "Bromo-caffein" applied to drug; *Northwestern Consol. Milling Co. v. Mauser & Cressman* (1908), 162 Fed. 1004, "Ceresota" applied to Minnesota flour; *Consolidated Ice Co. v. Hygeia Distilled Water Co.* (1907), 151 Fed. 10, "Hygeia" applied to distilled water; *Potter Drug & Chemical Corp. v. Pasfield Soap Co.* (1900), 102 Fed. 490, "Cuticura" applied to soap; *Sterling Remedy Co. v. Eureka Chemical and Manufacturing Co.* (1897), 80 Fed. 105, "No-To-Bac" applied to cure for tobacco habit; *N. K. Fairbank Co. v. Central Lard Co.* (1894), 64 Fed. 133, "Cottolene" applied to cotton oil shortening; *Leonard v. White's Golden Lubricator Co.* (1889), 38 Fed. 922, "Valvoline" applied to lubricating oil. Probably contra, *Woodcock v. Guy* (1903), 33 Wash. 234, 74 Pac. 358, "Gargeline" applied to throat medicine. Possibly Cal. Civ. Code, § 991, forbidding the appropriation of parts of a designation relating to the name, quality or description of the thing or business trademarked, would establish a different rule in California.

⁶ *Choynski v. Cohen* (1870), 39 Cal. 501, 2 Am. Rep. 476; *Hamilton Shoe Co. v. Wolf Bros.* (1916), 240 U. S. 251, 60 L. Ed. 629, 36 Sup Ct. Rep. 269.

⁷ *Burke v. Cassin* (1873), 45 Cal. 467, 13 Am. Rep. 204; *Italian Swiss Colony v. Italian Vineyard Co.* (1910), 158 Cal. 252, 110 Pac. 913, 32 L. R. A. (N. S.), 439; *Thermogene Co. v. Thermozine Co.* (1916), 234 Fed. 69; *Dadirrian v. Yacubian* (1896), 72 Fed. 1010.

⁸ *Albers Bros. Milling Co. v. Acme Mills Co.* (1909), 171 Fed. 989; *Extract of Meat Co. v. Walker* (1902), 115 Fed. 822.

custom makes it descriptive, rights to it will not be impaired.⁹ Thus if "groceterias" should become as common as cafeterias, no trademark could thereafter be acquired in the word, but trademarks acquired, like that in the principal case before the term became descriptive, would remain effective.

In the principal case, the trademark was printed on the wrappers in which the goods were sold. A trademark must be closely associated with the goods which it identifies. Mere use in advertisements is not enough.¹⁰ The principal case follows the rule that printing the trademark on wrappers is sufficient.¹¹

The court in the principal case thought it necessary to find that the market of the claimant overlapped the market of the infringer. In this respect the court failed to observe the distinction, pointed out earlier in the case, between a technical trademark, protected by the common law on the principle of ownership, and a mere tradename, protected in equity on the principle of unfair competition. Cases defining this distinction are legion.¹² If the principle of trademark applies, the right to exclusive use is co-extensive with the jurisdiction under which the right is claimed, and it is immaterial that the market of the claimant has not extended to the locality where the infringement occurs.¹³ Recent federal cases, however, make an important exception to this rule, deciding that if the holder of a trademark leaves a market untouched for a long period, he may be estopped from asserting his trademark in that locality as against an infringer acting in good faith.¹⁴ If the principle of tradename applies, the right to protection against unfair competition is obviously only co-extensive with the territory of the party claiming the tradename.¹⁵

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⁹ *Selchow v. Baker* (1883), 93 N. Y. 59, 45 Am. Rep. 169; *Lawrence Mfg. Co. v. Tennessee Mfg. Co.* (1890), 138 U. S. 537, 34 L. Ed. 997, 4 Sup. Ct. Rep. 396; *Celluloid Mfg. Co. v. Read* (1891), 47 Fed. 712.

¹⁰ *Hazelton Boiler Co. v. Hazelton Tripod Boiler Co.* (1892), 142 Ill. 494, 30 N. E. 339.

¹¹ *Jay v. Ladler* (1888), L. R. 40 Ch. Div. 649, 60 L. T. Rep. 27.

¹² *Modesto Creamery Co. v. Stanislaus Co.* (1914), 168 Cal. 289, 142 Pac. 845; *Eastern Outfitting Co. v. Manheim* (1910), 59 Wash. 428, 110 Pac. 23, 35 L. R. A. (N. S.), 251; *Esselstyn v. Holmes* (1911), 42 Mont. 507, 114 Pac. 118; *Sartor v. Schaden* (1904), 125 Iowa, 696, 101 N. W. 511; *Elgin National Watch Co. v. Illinois Watch Co.* (1901), 179 U. S. 665, 45 L. Ed. 365, 21 Sup. Ct. Rep. 270.

¹³ *Derringer v. Plate* (1865), 29 Cal. 292, 87 Am. Dec. 170; *Sartor v. Schaden*, supra, n. 12; *United Drug Co. v. Rectanus* (1913), 206 Fed. 570; *Consolidated Ice Co. v. Hygeia Distilled Water Co.*, supra, n. 5; *Morrison v. Case* (1872), 17 Fed. Cas. 9,845.

¹⁴ *Hanover Milling Co. v. Metcalf* (1916), 240 U. S. 403, 60 L. Ed. 713, 36 Sup. Ct. Rep. 357, Ann. Cas. 1916 D, 136; *Gaines & Co. v. Rock Spring Distilling Co.* (1915), 226 Fed. 531; *Carrol & Son Co. v. McIlvaine* (1909), 171 Fed. 125.

¹⁵ *Eastern Outfitting Co. v. Manheim*, supra, n. 12; *Sartor v. Schaden*, Supra, n. 12; *Kaufman v. Kaufman* (1916), 223 Mass. 104, 111 N. E. 691; *Ball v. Broadway Bazaar* (1907), 121 App. Div. 546, 106 N. Y. Supp. 249.